(86)

HIGH COURT OF CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. CJ

W.P. (C) No.3180 of 2007

PETITIONER Ram Singh, Aged about 42 years, S/o Govind Singh, R/o Village – Patadhi, Thesil and Distt. Korba (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
   Through its Secretary
   Department of Panchayat
   D.K.S. Bhawan, Raipur (C.G.)
2. Sub Divisional Officer (Revenue)
   Prescribed Authority, Distt. Korba (C.G.)
3. Indrajit Singh, S/o Phool Singh Kanwar, Aged About – 37 years (At present 39 years)
4. Ghururam, S/o Sukhiram, Aged about 42 years (At present 44 years)
5. Dukharan, S/o Maharaj Singh, Aged about 45 years (At present 47 years)
6. Budhpal Singh, S/o Ganga Singh, Aged about 35 years (At present 37 years)
7. Bhagwat, S/o Sudharam, Aged about 50 years (At present 52 years)
8. Mohan, S/o Romsingh, Aged about 63 years (At present 65 years)
9. Raksudan, S/o Pitambar Singh, Aged about 60 years (At present 62 years)
10. Rudrapal Singh S/o Brijlal, Aged about 30 years (At present 32 years)
11. Satuhan, S/o Jai Singh, Aged about 37 years (At present 39 years)
    R-3 to R-11 all are Resident of Village – Patadhi, Thesil and Distt. Korba (C.G.)
12. Returning Officer, Village – Patadhi Thesil and Distt. Korba (C.G.)

Petition under Article 227 of the Constitution of India

Present: Shri Vinay Pandey, counsel for the petitioner.
Shri V.V.S. Murthy, Dy. Advocate General for the State/respondents No. 1 & 2.

(87)

Shri Sunil Sahu, counsel for respondent No. 3.
Shri Rajesh Sharma, counsel for respondent No. 9.

ORAL ORDER
(Passed on 12th September, 2007)

Heard learned counsel for the parties.

It has been contended on behalf of the petitioner that the delay in filing the election petition cannot be condoned in light of Section 122 (2) of C.G. Panchayat Raj and Gram Swaraj Adhiniyam, 1993 which is referred to as hereunder:

> "**2. Extension of limitation** – The limitation prescribed for filing of election petition cannot be extended. Provisions of Limitation Act, including its section 5, do not apply to such presentation. *Kishan Singh Vs. Harveer Singh*, **1998 (I) MPWN 83**".

In support of learned counsel for the petitioner relies upon **A.I.R. 1974 page 480 Hukumdev Narain Yadav Vs. Lalit Narain Mishra** wherein it has been held as follows:-

> "17. Though S. 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where S. 29(2) has been made applicable to an election petition filed under S. 81 of the Act by virtue of which either Section 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under S. 81 of the Act, S. 29(2) would be attracted, and what we have to determine is whether the provisions of this section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are such

that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of S. 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in S. 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Ss. 81, 82 or 117. It will be seen that S. 81 is not the only section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under S. 81 it should equally apply to Ss. 82 and 117 because under S. 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, S. 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to S. 81. Again S. 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Ss. 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial".

In **2002(3) M.P.H.T. 547 Kalka Prasad** Vs. **Ramji Lal and others** the Madhya Pradesh High Court has also held that the delay cannot be condoned.

Learned counsel for the respondent No. 3 has contended before this Court that on 15/16-02-2005 the Sub Divisional Officer (Revenue) who had to

act as the prescribed authority was not available, therefore the election petition could not be filed and one day delay caused in filing the petition was subsequently condoned. Learned Deputy Advocate General for the State has placed before this Court certain documents signed by the Sub Divisional Officer (Revenue), Korba dated 09-09-2007, are taken on record. From perusal of the same it is crystal clear that the prescribed authority was available on 15-02-2005 and 16-02-2005 in his office. However, the record of 17-02-2005 is not available. In the light of the statement made by Dy. Advocate General and the relevant documents placed on record there is no doubt that the prescribed authority was present in the office on 15-02-2005 and 16-02-2005. Accordingly, the Election Petition could have been filed within time.

In this circumstance, the order passed by the Sub Divisional Officer (Revenue) is set aside and the writ petition stands allowed.

Sd/-
Acting Chief Justice